



Mr.

February 6, 1984

Ken McManigal

Business Inventory Exemption - : Production Modules

This is in response to your December 9, 1983, memorandum to Larry Augusta wherein you enclosed copies of correspondence from the Alameda County Assessor's Office, an Agreement between Sk , Al P, Cx (SAPC) and Sk Cx , C (SCC), and business inventory exemption Letters to Assessors and correspondence, and you inquired concerning the availability of the business inventory exemption for oil production modules being constructed by SCC in Alameda, Contra Costa, and San Joaquin Counties for use in Alaska by SAPC and others pursuant to the Agreement.

As Letters to Assessors Nos. 75/83 D10 and 80/69 D12 indicate, property held by a subsidiary corporation for sale to its parent corporation is eligible for the exemption:

"Assume that...company...were to organize a subsidiary whose business was to sell spare parts to the parent company. Would the spare parts owned by the subsidiary qualify as business inventories?

Answer: Yes."

The May 23, 1972, memorandum from Knowles to Mayer, the January 29, 1974, letter from Florence to Shellenberger, the June 13, 1975, letter from McManigal to Hutchinson, the September 23, 1975, memorandum from Knowles to Beeler, and the December 31, 1975, letter from Florence to Sealey are to the same effect. The rationale for such conclusion is set forth in the May 23, 1972, memorandum and in the January 25, 1974, memorandum from Delaney to Florence attached to the January 29, 1974, letter: absent the lack of a legitimate business purpose, separate corporate entities must be recognized as such, even though they may be related, sales by them may be made primarily or exclusively to related entities, and such sales may be at cost or without an intent to make a profit.

41-1-1-1 (Subsidiary)

The conclusions in the above mentioned Letters to Assessors and correspondence have not changed.

Although it is indicated that SAPC is believed to be at all times the owner of the modules because under Article 5.1 of the Agreement SAPC pays for all materials and labor in advance and because there are no dollar amounts mentioned therein, the Agreement states, among other things, that SCC will provide engineering and design services with respect to the facilities, manufacture, fabricate, and sell the facilities to SAPC, and inspect, transport, install and test the facilities, together, the "Contract Activities" (Article 1.1); that in consideration for the Contract Activities undertaken, including the purchase price for the facilities manufactured, SAPC agrees to compensate SCC in accordance with the provisions of Exhibit A (Article 4); and that any controversies or claims arising out of or relating to the Agreement shall be determined by California Law (Article 26). The Agreement is silent as to the time of passage of title to the facilities/modules.

Given the manufacture and sale of modules, Article 5.1 merely authorizing advance payments for costs of material and labor, and given the applicability of California Law, California Commercial Code Section 2401(2) provides with respect to passage of title:

"Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, ...and in particular and despite any reservation of a security interest by the bill of lading

* * *

"(b) If the contract requires delivery at destination, title passes on tender there."

And, while neither the Agreement nor Exhibit A mentions specific dollar amounts to be paid for the modules and services undertaken by SCC, Article 4 and Exhibit A do provide for the computation of the compensation to be paid SCC. Such are acceptable payment provisions in light of California Commercial Code Section 2305(1), which provides that parties may conclude a contract for sale even though the price is not settled, if they so intend.